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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

LISA EDWARDS as guardian ad litem of  
ARLENE BETTENCOURT, and  
ROXANNE HARRISON as guardian ad  
litem of HARRY HARRISON,

Plaintiffs,

v.

KINDRED HEALTHCARE, INC.;  
KINDRED HEALTHCARE  
OPERATING, INC.; CALIFORNIA  
NURSING CENTERS, LLC; KINDRED  
NURSING CENTERS WEST, LLC;  
HILLHAVEN-MSC PARTNERSHIP;  
ALTA VISTA HEALTHCARE &  
WELLNESS CENTRE (A/K/A ALTA  
VISTA HEALTHCARE); BAY VIEW

No. 3:11-CV-00050-JSW

**FIRST AMENDED COMPLAINT FOR:**

1. VIOLATION OF HEALTH & SAFETY  
CODE SECTION 1430(b)
2. UNLAWFUL, UNFAIR AND DECEPTIVE  
BUSINESS PRACTICES (Bus. & Prof. Code  
§ 17200 *et seq.*)
3. VIOLATION OF THE CONSUMERS  
LEGAL REMEDIES ACT (Civ. Code 1750 *et seq.*)

**CLASS ACTION**

**DEMAND FOR JURY TRIAL**

1 NURSING AND REHABILITATION  
 2 CENTER; CANYONWOOD NURSING  
 3 AND REHAB CENTER; CARE CENTER  
 4 OF ROSSMOOR, LLC; CARE CENTER  
 5 OF ROSSMOOR (F/K/A GUARDIAN OF  
 6 ROSSMOOR); FIFTH AVENUE  
 7 HEALTH CARE CENTER; GOLDEN  
 8 GATE HEALTHCARE CENTER;  
 9 HACIENDA CARE CENTER;  
 10 NINETEENTH AVENUE  
 11 HEALTHCARE CENTER; KINDRED  
 12 HEALTHCARE CENTER OF ORANGE;  
 13 SANTA CRUZ HEALTHCARE  
 14 CENTER; SMITH RANCH CARE  
 15 CENTER, LLC; SMITH RANCH CARE  
 16 CENTER(F/K/A GUARDIAN AT SMITH  
 17 RANCH CARE CENTER); VALLEY  
 18 GARDENS HEALTHCARE &  
 19 REHABILITATION CENTER;  
 20 VICTORIAN HEALTHCARE CENTER  
 21 (F/K/A HILLHAVEN VICTORIAN); and  
 22 DOES 1 through 100, inclusive,

23 Defendants.

24 Plaintiffs Arlene Bettencourt and Harry Harrison (“Named Plaintiffs” or “Plaintiffs”), on  
 25 behalf of themselves and a class of similarly situated persons, and based on information and  
 26 belief and the investigation of counsel, except for information based on personal knowledge,  
 27 hereby allege as follows:

### 28 **NATURE OF ACTION**

1. Plaintiffs bring this class action lawsuit under California Health and Safety Code  
 section 1430(b), Business & Professions Code sections 17200 *et seq.*, and the Consumers Legal  
 Remedies Act, Civil Code sections 1750 *et seq.* (“CLRA”) to redress the pervasive and  
 intentional failure to provide sufficient direct nursing care staffing for elderly and disabled  
 residents at skilled nursing facilities owned, leased, licensed, operated, administered, managed,  
 directed, and/or controlled by defendants within the State of California.

2. Understaffing is one of the primary causes of inadequate care and often unsafe  
 conditions in skilled nursing facilities. Numerous studies have shown a direct correlation

1 between inadequate staffing and serious care problems including, but not limited to, a greater  
2 likelihood of falls, pressure sores, significant weight loss, incontinence, and premature death.

3 3. In response to such studies linking inadequate staffing and serious care problems,  
4 all skilled nursing facilities in California since January 1, 2000 have been required to provide at  
5 least 3.2 hours of direct nursing hours per patient day (“NHPPD”) for each facility resident,  
6 pursuant to Health & Safety Code section 1276.5. The 3.2 NHPPD requirement under  
7 Section 1276.5 represents the minimum staffing required for patients at skilled nursing facilities.  
8 Depending on patient needs and other factors, higher levels of direct nursing hours may be  
9 warranted. Significantly, after extensive research into the staffing levels required to meet patient  
10 needs, the federal government has increased the minimum recommended level for skilled nursing  
11 staffing to 4.1 NHPPD.

12 4. As alleged in more detail below, defendants’ California skilled nursing facilities  
13 have failed to meet the 3.2 NHPPD minimum requirements on numerous days during the Class  
14 Period (November 23, 2006 to present). Not surprisingly, many of these facilities have a  
15 relatively high number of reported complaints, deficiencies, and citations arising from inadequate  
16 care of their elderly and disabled residents, as reflected in records maintained by the California  
17 Department of Health Services (“DHS”).

18 5. Defendants have misrepresented to the consuming public—in particular, the  
19 elderly and disabled residents and their family members—that defendants operate their nursing  
20 facilities in compliance with applicable laws, including laws such as Health & Safety Code  
21 section 1276.5. They have failed to disclose that, in fact, their facilities do not provide sufficient  
22 nursing staff to comply with minimum staffing requirements. Defendants’ representations and  
23 omissions are deceptive, misleading, and made with the intent to induce elderly and disabled  
24 citizens to become residents, and remain residents, at defendants’ facilities under a false pretense,  
25 namely, that defendants will provide the direct nursing staffing required by law. Defendants’  
26 misleading and deceptive conduct is particularly egregious given that the targeted persons are  
27 among the most vulnerable members of our society.  
28

**PARTIES**

6. Plaintiff Arlene Bettencourt, represented by her guardian ad litem and daughter Lisa Edwards, is a resident of Antioch, California, and is an “elder” as defined under Welfare & Institutions Code § 15610.27 and a “senior citizen” as defined under Cal. Civ. Code § 1761(f). During the Class Period, Arlene Bettencourt was a resident at Care Center of Rossmoor, f/k/a Guardian of Rossmoor, a skilled nursing care facility located in Walnut Creek, California.

7. Plaintiff Harry Harrison, represented by his guardian ad litem and daughter Roxanne Harrison, is a resident of Pittsburg, California, and is an “elder” as defined under Welfare & Institutions Code § 15610.27 and a “senior citizen” as defined under Cal. Civ. Code § 1761(f). During the Class Period, Harry Harrison was a resident at Care Center of Rossmoor, f/k/a Guardian of Rossmoor, a skilled nursing care facility located in Walnut Creek, California.

8. Defendant Kindred Healthcare, Inc. (“Kindred Inc.”) is a corporation formed and existing under the laws of the State of Delaware, with its principal place of business located at 680 South Fourth Street Louisville, Kentucky 40202-2407. On information and belief, during the Class Period defendant Kindred Inc. regularly conducted business in the State of California and—either directly or through its wholly-owned subsidiaries (including defendants Kindred Healthcare Operating, Inc., Kindred Nursing Centers West, LLC, and California Nursing Centers, LLC) and/or affiliated companies—owned, leased, licensed, operated, administered, managed, directed, and/or controlled numerous skilled nursing facilities in California.

9. Defendant Kindred Healthcare Operating, Inc. (“KHOI”) is a corporation formed and existing under the laws of the State of Delaware, with its principal place of business located at 680 South Fourth Street Louisville, Kentucky 40202-2407. On information and belief, during the Class Period defendant KHOI regularly conducted business in the State of California and—either directly or through its wholly-owned subsidiaries (including defendants Kindred Nursing Centers West, LLC and California Nursing Centers, LLC) and/or affiliated companies—owned, leased, licensed, operated, administered, managed, directed, and/or controlled numerous skilled nursing facilities in California.

1           10. Defendant Kindred Nursing Centers West, LLC (“Kindred West”) is a corporation  
2 formed and existing under the laws of the State of Delaware, with its principal place of business  
3 located at 680 South Fourth Street Louisville, Kentucky 40202-2407. On information and belief,  
4 during the Class Period defendant Kindred West regularly conducted business in the State of  
5 California and—either directly or through its wholly-owned subsidiaries (including defendant  
6 California Nursing Centers, LLC) and/or affiliated companies—owned, leased, licensed,  
7 operated, administered, managed, directed, and/or controlled numerous skilled nursing facilities  
8 in California.

9           11. Defendant California Nursing Centers, LLC (“California Nursing Centers”) is a  
10 corporation formed and existing under the laws of the State of Delaware, with its principal place  
11 of business located at 680 South Fourth Street Louisville, Kentucky 40202-2407. On information  
12 and belief, during the Class Period defendant California Nursing Centers regularly conducted  
13 business in the State of California and—either directly or through its wholly-owned subsidiaries  
14 (including defendants Care Center of Rossmoor, LLC and Smith Ranch Care Center, LLC)  
15 and/or affiliated companies—owned, leased, licensed, operated, administered, managed, directed,  
16 and/or controlled numerous skilled nursing facilities in California.

17           12. Defendants Kindred Inc., KHOI, Kindred West, and California Nursing Centers  
18 collectively are referred to as “Kindred.”

19           13. Defendant Hillhaven-MSO Partnership (“Hillhaven”) is on information and belief  
20 a general partnership with Defendant Kindred Inc. formed and existing under the laws of the State  
21 of California, with its principal place of business located at 680 South Fourth Street Louisville,  
22 Kentucky 40202-2407. On information and belief, during the Class Period defendant Hillhaven  
23 regularly conducted business in the State of California, and—either directly or through its wholly-  
24 owned subsidiaries and/or affiliated companies—owned, leased, licensed, operated, administered,  
25 managed, directed, and/or controlled skilled nursing facilities in California operated by Kindred,  
26 including defendant Nineteenth Avenue Healthcare Center.

27           14. Defendant Care Center of Rossmoor LLC is a limited liability company organized  
28 and existing under the laws of the State of Delaware, with a principal place of business at 680

1 South Fourth Street Louisville, Kentucky 40202-2407. On information and belief, during the  
2 Class Period defendant Care Center of Rossmoor LLC regularly conducted business in the State  
3 of California, and—either directly or through its wholly-owned subsidiaries and/or affiliated  
4 companies—owned, leased, licensed, operated, administered, managed, directed, and/or  
5 controlled skilled nursing facilities in California operated by Kindred, including defendant  
6 Rossmoor.

7 15. Defendant Smith Ranch Care Center, LLC is a limited liability company organized  
8 and existing under the laws of the State of Delaware, with its principal place of business located  
9 at 680 South Fourth Street Louisville, Kentucky 40202-2407. On information and belief, during  
10 the Class Period Smith Ranch Care Center, LLC regularly conducted business in the State of  
11 California, and—either directly or through its wholly-owned subsidiaries and/or affiliated  
12 companies—owned, leased, licensed, operated, administered, managed, directed, and/or  
13 controlled skilled nursing facilities in California operated by Kindred, including defendant Smith  
14 Ranch.

15 16. Defendant Alta Vista Healthcare & Wellness Centre a/k/a Alta Vista Healthcare  
16 (“Alta Vista”) during the Class Period up to September 30, 2009, was a skilled nursing care  
17 facility located in Riverside, California and operating there under a license granted to Kindred  
18 West by the State of California Department of Public Health. On information and belief, during  
19 the Class Period up to September 30, 2009 defendant Alta Vista was leased, licensed, operated,  
20 administered, managed, directed, and/or controlled by, or otherwise affiliated with Kindred.

21 17. Defendant Bay View Nursing and Rehabilitation Center (“Bay View”) is a skilled  
22 nursing care facility located in Alameda, California and operating there under a license granted to  
23 Kindred West by the State of California Department of Public Health. On information and belief,  
24 during the Class Period defendant Bay View was leased, licensed, operated, administered,  
25 managed, directed, and/or controlled by, or otherwise affiliated with, Kindred.

26 18. Defendant Canyonwood Nursing and Rehab Center (“Canyonwood”) is a skilled  
27 nursing care facility located in Redding, California and operating there under a license granted to  
28 Kindred West by the State of California Department of Public Health. On information and belief,

1 during the Class Period defendant Canyonwood was leased, licensed, operated, administered,  
2 managed, directed, and/or controlled by, or otherwise affiliated with, Kindred.

3 19. Defendant Fifth Avenue Health Care Center (“Fifth Avenue”) is a skilled nursing  
4 care facility located in San Rafael, California and operating there under a license granted to  
5 Kindred West by the State of California Department of Public Health. On information and belief,  
6 during the Class Period defendant Fifth Avenue was leased, licensed, operated, administered,  
7 managed, directed, and/or controlled by, or otherwise affiliated with, Kindred.

8 20. Defendant Golden Gate Healthcare Center (“Golden Gate”) is a skilled nursing  
9 care facility located in San Francisco, California and operating there under a license granted to  
10 Kindred West by the State of California Department of Public Health. On information and belief,  
11 during the Class Period defendant Golden Gate was owned, leased, licensed, operated,  
12 administered, managed, directed, and/or controlled by, and/or otherwise affiliated with, Kindred.

13 21. Defendant Hacienda Care Center (“Hacienda”) is a skilled nursing care facility  
14 located in Livermore, California and operating there under a license granted to Kindred West by  
15 the State of California Department of Public Health. On information and belief, during the Class  
16 Period defendant Hacienda was owned, leased, licensed, operated, administered, managed,  
17 directed, and/or controlled by, and/or otherwise affiliated with, Kindred.

18 22. Defendant Nineteenth Avenue Healthcare Center (“Nineteenth Avenue”) is a  
19 skilled nursing care facility located in San Francisco, California and operating there under a  
20 license granted to Hillhaven by the State of California Department of Public Health. On  
21 information and belief, during the Class Period defendant Nineteenth Avenue was owned, leased,  
22 licensed, operated, administered, managed, directed, and/or controlled by, and/or otherwise  
23 affiliated with, Kindred.

24 23. Defendant Kindred Healthcare Center of Orange (“Orange”), during the Class  
25 Period until September 30, 2009, was a skilled nursing care facility located in Orange, California  
26 and operating there under a license granted to Kindred West by the State of California  
27 Department of Public Health. On information and belief, during the Class Period up to September  
28



1 30, 2009 defendant Orange was leased, licensed, operated, administered, managed, directed,  
2 and/or controlled by, or otherwise affiliated with, Kindred.

3 24. Defendant Care Center of Rossmoor f/k/a Guardian of Rossmoor (“Rossmoor”) is  
4 a skilled nursing care facility located in Walnut Creek, California and operating there under a  
5 license granted to Care Center of Rossmoor LLC by the State of California Department of Public  
6 Health. On information and belief, during the Class Period defendant Rossmoor was leased,  
7 licensed, operated, administered, managed, directed, and/or controlled by, or otherwise affiliated  
8 with, Kindred.

9 25. Defendant Santa Cruz Healthcare Center (“Santa Cruz”) is a skilled nursing care  
10 facility located in Santa Cruz, California and operating there under a license granted to Kindred  
11 West by the State of California Department of Public Health. On information and belief, during  
12 the Class Period defendant Santa Cruz was owned, leased, licensed, operated, administered,  
13 managed, directed, and/or controlled by, and/or otherwise affiliated with, Kindred.

14 26. Defendant Smith Ranch Care Center f/k/a Guardian at Smith Ranch Care Center  
15 (“Smith Ranch”) is a skilled nursing care facility located in San Rafael, California, and operating  
16 there under a license granted to Smith Ranch Care Center LLC by the State of California  
17 Department of Public Health. On information and belief, during the Class Period defendant Smith  
18 Ranch was owned, leased, licensed, operated, administered, managed, directed, and/or controlled  
19 by, and/or otherwise affiliated with, Kindred.

20 27. Defendant Valley Gardens Healthcare & Rehabilitation Center (“Valley Gardens”) is  
21 a skilled nursing care facility located in Stockton, California and operating there under a license  
22 granted to Kindred West by the State of California Department of Public Health. On information  
23 and belief, during the Class Period defendant Valley Gardens was leased, licensed, operated,  
24 administered, managed, directed, and/or controlled by, or otherwise affiliated with, Kindred.

25 28. Defendant Victorian Healthcare Center f/k/a Hillhaven Victorian (“Victorian”) is a  
26 skilled nursing care facility located in San Francisco, California and operating there under a  
27 license granted to Kindred West by the State of California Department of Public Health. On  
28 information and belief, during the Class Period defendant Victorian was owned, leased, licensed,



1 operated, administered, managed, directed, and/or controlled by, and/or otherwise affiliated with,  
2 Kindred.

3 29. Each of the entities referenced in paragraphs 16 through 28 above is a “skilled  
4 nursing facility” as defined in Health & Safety Code section 1250. For purposes of this  
5 Complaint, each such entity is referred to as a “Facility” and, collectively, the “Facilities.”

6 30. At all times herein mentioned, defendants have all regularly conducted business  
7 throughout the State of California, including, but not limited to, the ownership, leasing, licensing,  
8 administration, operation, management, and/or supervision, and organization of the Facilities.

9 31. In response to frustration regarding identifying the entities responsible for nursing  
10 homes, the federal government recently enacted the Nursing Home Transparency Act (42 U.S.C.  
11 Sect 1320a-3) to help untangle the organizational structure of nursing home chains. The  
12 information required to be disclosed under the Act will not be available to the public until March  
13 of 2013. *See also* New York Times, September 23, 2007, “More Profit and Less Nursing at Many  
14 Nursing Homes” (describing how for-profit nursing home corporations are dividing themselves  
15 into many separate shell companies in order to avoid being held accountable to both the public  
16 regulatory system and residents). [www.nytimes.com/2007/09/23/business/23nursing.html](http://www.nytimes.com/2007/09/23/business/23nursing.html).

17 32. The Facilities named here have no corporate headquarters, governing bodies, or  
18 traditional management hierarchy. Instead, Kindred Inc. manages, controls, and operates the  
19 Facilities. All the Facilities reside in Kindred Inc.’s health services division, which is managed  
20 by Kindred’s president and chief financial officer. Kindred Inc.’s nursing center operations are  
21 divided into three geographic regions, each of which is headed by an operational senior vice  
22 president who reports directly to the division president. Kindred Inc. oversees clinical issues and  
23 quality concerns of the Facilities with management consisting of physicians, chief medical  
24 officers, medical directors, senior vice presidents of clinical and nursing operations, and regional  
25 and district teams.

26 33. Kindred Inc. provides the Facilities with centralized management, information  
27 systems, state licensing and certification maintenance, legal, finance, accounting, risk  
28 management, clinical, HR, training, IT, compliance, purchasing, and other functions. While the

1 Facilities have lower level managers on site, the senior management and operational decisions at  
 2 each are conducted by Kindred Inc. in accordance with a common business model.

3 34. In filings with the SEC, Kindred Inc. describes how it monitors and oversees the  
 4 Facilities. For example, Kindred Inc.:

5 Monitor[s] and enhance[s] the quality of care and customer service  
 6 at our nursing and rehabilitation centers through the use of  
 7 performance improvement committees as well as family satisfaction  
 8 surveys. Our performance improvement committees oversee  
 9 resident healthcare needs and resident and staff safety. Physician  
 10 medical directors serve on these committees and advise on  
 11 healthcare policies and practices. We regularly conduct surveys of  
 12 residents and their families, and these surveys are reviewed by our  
 13 performance improvement committees at each center to promote  
 14 quality care and customer service.

11 Kindred Healthcare, Inc., Annual Report Pursuant to Section 13 or 15(d) of the Securities  
 12 Exchange Act of 1934, for the fiscal year ended Dec. 31, 2009 ("Kindred 2009 Form 10-K") at  
 13 13.

14 35. There is a sufficient unity of interest and ownership between Kindred Inc.,  
 15 Kindred West, California Nursing Centers, KHOI and the Facilities, and each of them, such that  
 16 the acts of one are for the benefit of all and can be imputed to the acts of the others. Without  
 17 limitation, the unity of interest and relationship between these defendants is evidenced by: (a)  
 18 Kindred's key decisions or approval of such decisions concerning each Facility's day-to-day  
 19 operations, such as staffing levels, employee hiring and firing, budgets and related issues, which  
 20 decisions and directives, on information and belief, were made at the direction of and/or the  
 21 benefit of Kindred; (b) communications by Kindred with the Department of Health Services with  
 22 respect to licensing and certification issues affecting the Facilities, which communications, on  
 23 information and belief, were undertaken at the direction of and/or for the benefit of Kindred; and  
 24 (c) overlapping officers, directors and employees between the various entities. Actions taken by  
 25 these defendants were undertaken within the course and scope of their agency and employment,  
 26 with the knowledge, consent, authorization, approval, and/or ratification of their co-defendants.

27 36. Kindred is a common agent of each of the Facilities, and/or Kindred is a common  
 28 alter-ego of each of the Facilities, and/or Kindred and the Facilities are part of a single enterprise

1 formed for a common purpose with a unity of interest. The viability of each of the Facilities is  
2 intertwined with their dependence on Kindred. As described further within, consistent with this  
3 unity of interest and interdependence, the senior management and control of each of the Facilities  
4 is delegated to and/or otherwise conducted by Kindred. Kindred actively participates in and  
5 manipulates the business activities of the Facilities, including the conduct challenged in this  
6 complaint. The control and manipulation of the Facilities by Kindred is so pervasive that each of  
7 them is but an agent, instrumentality, conduit and/or alter-ego of Kindred in the prosecution of a  
8 single venture, namely, the provision of nursing home services to California consumers, including  
9 members of the Class. There is such unity of interest, ownership and management that the  
10 separateness of the defendant corporations have in effect ceased and an adherence to the fiction of  
11 a separate existence of the multiple corporations or entities would, under the circumstances here  
12 present, promote injustice and make it inequitable for Kindred Inc., Kindred West, California  
13 Nursing Centers, and KHOI to escape liability for obligations incurred as much for their benefit  
14 as the Facilities.

15 37. Kindred conducts, manages, and controls the material compliance functions for the  
16 Facilities, including those associated with compliance with the legal and regulatory issues  
17 challenged in this lawsuit, namely the failure of each of the Facilities to comply with laws and  
18 regulations mandating adequate nurse staffing. Additionally, each of the Facilities delegated such  
19 compliance functions to Kindred to conduct on their behalf. Among other things, with respect to  
20 the Facilities, Kindred: (1) oversees all compliance program operations; (2) conducts and  
21 oversees regular and targeted training on compliance programs, policies and procedures, as well  
22 as federal and state laws and regulations affecting the skilled nursing, home health, and hospice  
23 industries; (3) leads and coordinates the efforts of all compliance personnel; (4) develops and  
24 implements systems to assist clients in detecting, preventing and reporting potential fraud, waste,  
25 and abuse in business operations; (5) creates, reviews, revises, and updates, at a minimum  
26 annually, core elements of the compliance program, including but not limited to compliance-  
27 related policies and procedures; (6) develops and executes a compliance work plan that is based  
28 on industry and government activities, results of internal and external audits and surveys, trended

1 hotline data and other identified areas of prioritized compliance risk; (7) oversees the compliance  
 2 hotline and maintains systems to respond to calls in a timely manner; (8) tracks data related to  
 3 compliance issues; (9) initiates, directs, and participates in investigations related to compliance  
 4 concerns and issues, and works with management to bring such issues to resolution; (10) works  
 5 collaboratively with each of the Facilities; (11) provides reports of relevant compliance program  
 6 activities to the Kindred Board of Directors on at least a quarterly basis; (12) develops,  
 7 implements, and evaluates a system of enterprise-wide compliance communication to all  
 8 employees; (13) identifies, monitors, and responds to potential areas of compliance vulnerability,  
 9 including minimum nursing hour requirements; (14) conducts formal compliance risk  
 10 assessments that drive the development of an annual compliance work plan; (15) oversees the  
 11 development, and monitors implementation, of corrective action plans in response to internal or  
 12 external regulatory audit/survey findings; and (16) manages all other aspects of the Facilities'  
 13 compliance efforts. The failure of the aforementioned compliance functions caused Plaintiffs and  
 14 the Class loss and injury, as described more fully below.

15         38. Each of the Facilities is wholly owned, leased, operated, managed, and/or  
 16 controlled by Kindred, and Kindred fails to recognize the uniqueness and independence of the  
 17 Facilities, even when Kindred does not own the Facility. At all times relevant hereto there was  
 18 such a unity of interest and ownership between Kindred and the Facilities such that the individual  
 19 distinctions between them have ceased and that the facts as alleged herein are such that an  
 20 adherence to the fiction of the separate existence of Kindred from that of the Facilities would,  
 21 under the particular circumstances alleged herein, sanction a fraud and/or promote injustice. On  
 22 information and belief, Kindred deliberately set up empty shells and agents so that it could  
 23 deceive the public and the residents as to who was actually responsible for the decisions made at  
 24 the Facilities, while also siphoning funds out of the Facilities. Kindred is the alter-ego of each of  
 25 the Facilities and any corporate veil should be pierced.

26         39. Plaintiffs allege on information and belief the following facts demonstrating  
 27 defendants' unity of interest:  
 28

1           a.       Kindred Inc. provides letters to the California Department of Health on  
2       behalf of its subsidiaries, including the Facilities named herein, as evidence that the subsidiaries  
3       have sufficient resources to operate the Facilities for a period of at least 45 days, based upon  
4       multiple Facilities having access to the same multimillion dollar line of credit at the same bank.  
5       These letters show commingling of funds and that Kindred Inc. exercises budgetary control over  
6       its subsidiaries.

7           b.       Kindred Inc. retains excess professional liability funds from the Facilities  
8       and uses them to create equity or pay down debt, rather than these funds being returned to the  
9       Facilities or credited to the Facilities' reserves, again showing commingling of funds.

10          c.       Kindred Inc. indicates in its SEC filings that it manages labor costs by  
11       adjusting nurse staffing, showing Kindred Inc.'s oversight of employment matters at the Facility-  
12       level (where nursing care is provided) and centralized budgetary control. Kindred Healthcare,  
13       Inc., Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, for  
14       the fiscal year ended Dec. 31, 2007 at 37, 59; and for the fiscal year ended Dec. 31, 2008 at 6, 14.

15          d.       According to documents submitted by defendants to the California  
16       Department of Public Health, the same persons serve as the Vice Presidents, Senior Vice  
17       Presidents, Executive Vice Presidents, and Presidents at both Kindred Inc. and KHOI, at the same  
18       address.

19          e.       Kindred Inc. Facilities do not negotiate or execute their own master leases  
20       but do have obligations under them, reflecting the lack of an arms-length transaction. Also, the  
21       master leases cross-collateralize lease payments among Facilities, such that if a particular Facility  
22       cannot pay the rent, other Facilities or Kindred subsidiaries would cover the debt. Defendants  
23       thus have agreed to be liable for each other's debts.

24          f.       The Facilities freely use the trademarks of Kindred with no consideration  
25       or royalty fee. All defendants use the Kindred logo, and their written materials describe Kindred  
26       as if it were a single entity.

27          40.       On information and belief, at all times herein mentioned, defendants, and each of  
28       them, was the agent, partner, joint venturer, representative, and/or employee of the remaining

1 defendants, and was acting within the course and scope of such agency, partnership, joint venture,  
2 and/or employment. Furthermore, in engaging in the conduct described below, defendants were  
3 all acting with the express or implied knowledge, consent, authorization, approval, and/or  
4 ratification of their co-defendants.

### 5 **JURISDICTION AND VENUE**

6 41. This Court has jurisdiction over all causes of action asserted herein. Defendants  
7 are subject to the personal jurisdiction of this Court because each defendant has sufficient  
8 minimum contacts in California, or otherwise intentionally avails itself of the California market  
9 through participation in skilled nursing facilities located in California, derivation of substantial  
10 revenues from California, and other activities, so as to render the exercise of jurisdiction over it  
11 by the California courts consistent with traditional notions of fair play and substantial justice.

12 42. This court has subject matter jurisdiction pursuant to the Class Action Fairness  
13 Act, 28 U.S.C. § 1446.

14 43. Venue is proper in this District under 28 U.S.C. § 1391(a), based on the facts,  
15 without limitation, that: this Court is a court of competent jurisdiction; defendants were subject  
16 to personal jurisdiction in the District at the time this action commenced based on conducting  
17 substantial business in this District, including without limitation, the ownership, administration,  
18 management, and/or operation of the Golden Gate, Nineteenth Avenue, and Victorian Facilities; a  
19 substantial part of the events or omission giving rise to the Plaintiffs' claims arose in this District;  
20 Plaintiffs reside in this District; a portion of defendants' liability arose in this District; and certain  
21 acts upon which this action is based occurred in part in this District.

### 22 **GENERAL ALLEGATIONS**

23 44. Defendants were and are in the business of providing long-term care and are  
24 subject to the requirements of federal law, and California statutory and regulatory law, governing  
25 the operation of skilled nursing facilities. At all relevant times, Defendants owned, leased,  
26 licensed, operated, administered, managed, directed, and/or controlled numerous skilled nursing  
27 facilities in California.  
28

1           45.     Kindred Inc. classifies itself as the “largest publicly held operator of nursing and  
2     rehabilitation centers in the United States.” Kindred 2009 Form 10-K at 13.

3           46.     The General Accountability Office has found that most poorly performing nursing  
4     homes in the U.S. are owned by for-profit chains. GAO, *CMS’s Specific Focus Facility*  
5     *Methodology Should Better Target the Poorly Performing Facilities Which Tend To Be Chain*  
6     *Affiliated and For-Profit*, GAO-09-689 (2009). Many studies have shown that for-profit nursing  
7     homes have poorer quality, operate with lower costs, and have lower staff-patient ratios than  
8     nonprofit facilities. *See, e.g.,* V.R. Comondore et al., *Quality of Care on For-Profit and Not-*  
9     *for-Profit Nursing Homes: Systemic Review and Meta-Analysis*, 339 Brit. Med. J. 2732 (2009).  
10    Other studies have found that poor nursing home quality is directly related to inadequate staffing  
11    levels. *See, e.g.,* U.S. Centers for Medicare and Medicaid Services, *Report to Congress:*  
12    *Appropriateness of Minimum Nurse Staffing Ratios in Nursing Homes* (2001).

13          47.     Kindred Inc. has a long history of compliance issues. Kindred Inc.’s corporate  
14    predecessor, Vencor, Inc., and Ventas, Inc., a related real estate investment trust, faced a \$1.3  
15    billion fraud claim from the United States government alleging that Vencor knowingly submitted  
16    false claims to Medicare, Medicaid, and Tricare, the military’s health care program. In 2001, this  
17    suit and related civil claims settled for \$219 million. After reorganization following Vencor’s  
18    Chapter 11 bankruptcy in 1999, from 2001 to 2008, Kindred Inc. entered into a corporate  
19    compliance agreement (CIA) with the U.S. Office of the Inspector General (OIG) because of poor  
20    quality of care. In 2009, Kindred Healthcare agreed to pay \$1.3 million to settle allegations in a  
21    qui tam complaint that Kindred billed Medicaid for a higher number of drugs than were actually  
22    administered.

23          48.     In 1999, in response to growing concern over the low levels of direct patient  
24    staffing and quality of care in nursing homes, the California Legislature amended Health & Safety  
25    Code section 1276.5 to increase the minimum nursing staff requirement to 3.2 hours of direct  
26    patient care per day, effective January 2000.

27          49.     Section 1276.5, as amended, states in pertinent part:  
28



1 [C]ommencing January 1, 2000, the minimum number of actual  
 2 nursing hours per patient required in a skilled nursing facility shall  
 be 3.2 hours, except as provided in Section 1276.9.

3 For purposes of this section, “nursing hours” means the number of  
 4 hours of work performed per patient day by aids, nursing assistants,  
 or orderlies plus two times the number of hours worked per patient  
 5 day by registered nurses and licensed vocational nurses (except  
 directors of nursing in facilities of 60 or larger capacity) ... except  
 6 that nursing hours for skilled nursing facilities mean the actual  
 hours of work, without doubling the hours performed per patient  
 7 day by registered nurses and licensed vocational nurses.

8 Health & Safety Code § 1276.5 (a) and (b)(1). The California skilled nursing facilities that are at  
 9 issue in this action are not exempt under Health & Safety Code section 1276.9.

10 50. Generally, only the hours of certified nurses assistants, licensed vocational nurses,  
 11 and registered nurses are considered to determine whether staffing ratios at skilled nursing  
 12 facilities are in compliance with the requirement of Section 1276.5. The 3.2 NHPPD requirement  
 13 is calculated on a facility-wide basis over a 24-hour period.

14 51. Consistent with Section 1276.5, Health & Safety Code section 1559.1 establishes a  
 15 “Patient’s Bill of Rights” for residents in skilled nursing facilities that requires, among other  
 16 things, that the skilled nursing facilities “employ an adequate number of qualified personnel to  
 17 carry out all functions of the facility.” An essential function of a skilled nursing facility is the  
 18 provision of nursing services.

19 52. At all relevant times, defendants have been required to staff the Facilities with  
 20 sufficient levels of qualified personnel so as to comply with the 3.2 NHPPD requirement of  
 21 Section 1276.5 and the requirements of Section 1599.1.

22 53. Defendants portray and promote their facilities as meeting or exceeding all  
 23 statutory and regulatory requirements, including minimum staffing requirements. In their  
 24 standard Resident Rights and in postings at their facilities, defendants uniformly and  
 25 systematically claim to adhere to “the resident rights afforded under State law, [which] may be  
 26 obtained from the [Kindred] business office,” including the Patient’s Bill of Rights, as set forth in  
 27 Section 72527 of the California Administrative Code, which in part requires defendants to  
 28 provide an “adequate number of qualified personnel.”

1           54.     Kindred's standard Code of Conduct provided to new residents states in pertinent  
2 part: "Kindred strives to sustain the highest quality of services." The Code of Conduct further  
3 states that Kindred's "[o]fficers, employees and contractors are expected to adhere to practices  
4 that promote these measures," including a "commitment to excellence" requiring Kindred "to be  
5 responsive to patient, resident and family concerns" and "maintain patient/residents' rights and  
6 dignity at all times while under our care." Kindred's yearly Quality and Social Responsibility  
7 Reports likewise tout Kindred's purportedly high quality standards.

8           55.     In addition, defendants have also promised the State of California that they meet  
9 all state and federal requirements regarding the operation, management, administration, and/or  
10 ownership of a skilled nursing facility. In particular, as part of the initial licensing and annual  
11 renewal process for each Facility, defendants promise to comply with the Health and Safety Code  
12 and applicable regulations, which include minimum staffing requirements. The California  
13 Department of Public Health lacks the resources, however, to monitor daily staffing levels at the  
14 Facilities. At best, it samples only a few days per year.

15           56.     Defendants' representations track their duty under California law to provide  
16 sufficient nursing staff and related services. Unfortunately, the actual nurse staffing provided falls  
17 well short of defendants' representations and their legal duty. Defendants have systematically  
18 and continuously failed to comply with the 3.2 hour NHPPD requirement under Section 1276.5  
19 on 20% or more days during the Class Period.

20           57.     Despite their failure to adequately staff their skilled nursing facilities in California  
21 and provide the quality of care they claimed to provide, defendants wrongly received in the  
22 aggregate millions of dollars in payments from residents and/or their family members. These  
23 monies were solicited and collected under the false and misleading pretense that defendants  
24 complied with California staffing laws and would remain in compliance.

25           58.     Plaintiffs Arlene Bettencourt and Harry Harrison have resided in the Care Center  
26 of Rossmoor facility on days during the Class Period when direct nursing staff levels were below  
27 the minimum levels required under California law.  
28

1           59. Defendants did not disclose to Plaintiffs that they did not intend to comply with  
2 the 3.2 hour NHPPD minimum staffing requirements of Section 1276.5 or employ an adequate  
3 number of qualified nursing personnel to carry out all of the functions of their facilities in  
4 compliance with Section 1599.1. Plaintiffs reasonably expected that staffing would comply with  
5 the legal requirements and paid money to defendants from their own funds to remain at the  
6 Golden Gate facility. However, defendants failed to provide the nursing staffing levels that  
7 Plaintiffs reasonably expected to receive. As such, Plaintiffs lost money and was injured in fact  
8 as a result of defendants' failure to comply with the legal minimum staffing requirements.  
9 Plaintiffs were also deprived of their rights under Sections 1276.5 and 1599.1 to reside in a  
10 skilled nursing facility that provided sufficient skilling nursing personnel to comply with  
11 California law.

12           60. During her stay at the Rossmoor facility, Plaintiff Arlene Bettencourt was  
13 subjected to indignities and other harms that directly resulted from inadequate nurse staffing  
14 levels at the facility, including without limitation: inappropriate chemical and physical restraints;  
15 no response or long response times to her call light; failure to provide showers; lack of assistance  
16 with grooming and bathing; lack of assistance with eating; lack of assistance with dressing,  
17 including being left without clothing in the hallway; and falls.

18           61. During his stay at the Rossmoor facility, Plaintiff Harry Harrison was subjected to  
19 indignities and other harms that directly resulted from inadequate nurse staffing levels at the  
20 facility, including without limitation: infrequent and inadequate turning and repositioning;  
21 inadequate attention to toileting needs; no response or long response times to her call light; lack  
22 of assistance with grooming and bathing; lack of assistance with eating, resulting in empty or  
23 clogged feeding tubes; lack of assistance with dressing; and failure to provide fluids as needed.  
24 Plaintiff Harrison's family often could find no staff at the Facility. There would be no nurses  
25 present on the floor for hours at a time.  
26  
27  
28

**CLASS ACTION ALLEGATIONS**

62. This action is brought on behalf of the Named Plaintiffs identified above and all similarly situated persons pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3). The class is defined as:

a. **Facility Resident Class.** All persons who, from November 23, 2006 through the present (the “Class Period”), resided at a Facility on at least one day during which the Facility did not provide at least 3.2 hours of direct nursing care per patient day. The claims alleged in the First Cause of Action under Health & Safety Code section 1430(b) are asserted on behalf of the Facility Resident Class.

i. **Private Pay Subclass.** All persons who are members of the Facility Resident Class and who made payments to the defendants, or any of them, through their own funds during the Class Period. In addition to claims under Health & Safety Code section 1430(b), the claims alleged in the Second Cause of Action (Business & Professions Code section 17200 *et seq.*), and Third Cause of Action (Civil Code section 1770 *et seq.*) are asserted on behalf of the Facility Resident – Private Pay Subclass.

b. Excluded from the above-referenced class and subclass are: (i) persons who resided at the Alta Vista and Orange Facilities after they were sold on September 30, 2009; (ii) the defendants, any entity in which the defendants have a controlling interest, the officers, directors, and employees of any defendant, and the legal representatives, heirs, successors, and assigns of defendants; (iii) any judge assigned to hear this case (or any spouse or family member of any assigned judge); (iv) any juror selected to hear this case, (v) claims for personal injury and wrongful death; and (vi) any and all legal representatives of the parties and their employees.

63. This action seeks to enjoin defendants from understaffing, failing to disclose their understaffing, and making misleading promises about staffing. In addition, this action seeks recovery for economic damages or restitution arising from defendants’ understaffing, such as recovery of statutory damages and/or monies paid by Plaintiffs and the class as a result of defendants’ failure to disclose and misleading promises. This action does not seek recovery for

1 personal injuries, wrongful death or other resident-specific harm that may have been caused by  
2 inadequate staff at defendants' facilities.

3 64. **Numerosity of the Class.** Members of the class are so numerous that their  
4 individual joinder herein is impracticable. The precise number of members of the class and their  
5 addresses are presently unknown to Plaintiffs. The precise number of persons in the class and  
6 their identities and addresses may be ascertained from defendants' records. If deemed necessary  
7 by the Court, members of the class may be notified of the pendency of this action by mail,  
8 supplemented by published notice.

9 65. **Common Questions of Fact and Law.** Common questions of law and fact exist  
10 as to all members of the class. These common legal and factual questions include, without  
11 limitation:

12 a. whether all or some of the Facilities failed to comply with the 3.2 hour  
13 NHPPD minimum staffing requirements of Health & Safety Code section 1276.5 during the Class  
14 Period;

15 b. whether defendants failed to employ an adequate number of qualified  
16 nursing personnel to carry out all of the functions of their Facilities in violation of Health &  
17 Safety Code section 1599.1;

18 c. whether defendants' understaffing their Facilities violates any right(s) of  
19 residents as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California  
20 Administrative Code;

21 d. whether defendants' conduct violates Health & Safety Code  
22 section 1430(b);

23 e. whether defendants' conduct violates Business & Professions Code  
24 section 17200 *et seq.*

25 f. whether defendants' conduct violates the Consumer Legal Remedies Act,  
26 Civ. Code § 1770 *et seq.*; and  
27  
28

g. whether defendants engaged in a pattern and practice of unfair and deceptive conduct in connection with their management, administration and operation of the Facilities.

66. **Typicality.** The claims of the Named Plaintiffs are typical of the claims of the Facility Resident Class. On information and belief, Plaintiffs and Facility Resident Class Members resided at one or more of the Facilities during the Class Period on days when that Facility failed to (a) meet the 3.2 hour NHPPD minimum staffing requirements of Health & Safety Code section 1276.5; and/or (b) failed to employ an adequate number of qualified nursing personnel to carry out all of the functions of the Facility in violation of Health & Safety Code section 1599.1.

67. In addition, the Named Plaintiffs made payments to one or more of the defendants for skilled nursing services rendered at a Facility through private pay funds during the Class Period.

68. **Adequacy.** The Named Plaintiffs will fairly and adequately represent the class and subclass on whose behalf this action is prosecuted. Their interests do not conflict with the interests of the Class. Also, they have retained competent counsel who have experience in class action litigation and will prosecute this action vigorously.

69. **Defendants' Actions Apply Generally to the Class.** The above-referenced class may be certified under Federal Rule of Civil Procedure 23(b)(2) because Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final and injunctive relief with respect to the Class.

70. **Predominance of Common Questions of Law and Fact.** The above-referenced class may be certified under Federal Rule of Civil Procedure 23(b)(3) because questions of law and fact common to Class members, such as those listed above, predominate over the questions affecting only individual members of the Class.

71. **Superiority of Class Action.** A class action is superior to other available means for the fair and efficient adjudication of the claims asserted herein. The statutory damages, restitution and other potential recovery for each individual member of the Class are modest,

1 relative to the substantial burden and expense of individual prosecution of these claims. Given  
 2 the amount of the individual Class members' claims, few, if any, class members could afford to  
 3 seek legal redress individually for the wrongs complained of herein. Thus, few, if any, Class  
 4 members have any interest in individually controlling the prosecution of separate actions based on  
 5 the claims in this action.

6 72. Upon information and belief, no other litigation by a class member concerning the  
 7 controversy in this case is proceeding.

8 73. It is desirable to concentrate actions based on Plaintiffs' claims in this forum.  
 9 Even if the members of the class themselves could afford individual litigation, the court system  
 10 could not. Individualized litigation increases the delay and expense to all parties and the court  
 11 system given the complex legal and factual issues of the case. By contrast, the class action device  
 12 presents far fewer management difficulties, and provides the benefits of single adjudication,  
 13 economy of scale, and comprehensive supervision by a single court.

14 74. There are few, if any, likely difficulties in managing this action as a class action.

15 **FIRST CAUSE OF ACTION FOR VIOLATION OF HEALTH & SAFETY CODE**  
 16 **SECTION 1430(b) AGAINST ALL DEFENDANTS**

17 75. Plaintiffs refer to, and incorporate herein by this reference, paragraphs 1 through  
 18 74 above.

19 76. Health & Safety Code section 1430(b) provides that "a current or former resident  
 20 or patient of a skilled nursing facility as defined in subdivision (c) of section 1250 . . . may bring  
 21 a civil action against the licensee of a facility who violates any rights of the resident or patient as  
 22 set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Code of  
 23 Regulations [which incorporates Health & Safety Code section 1599.1], or any other right  
 24 provided for by federal or state law or regulation."

25 77. Section 1430(b) provides for a remedy of statutory damages "up to \$500" per  
 26 violation, together with a right to injunctive relief, attorneys' fees and costs. Health & Safety  
 27 Code § 1430(b). The remedies in Section 1430(b) are cumulative to any other remedies provided  
 28



1 by law. *Id.* § 1430(c). Given that the violation involves elderly and/or disabled residents, the  
 2 statutory damage award is subject to trebling under Civil Code section 3345.

3 78. Defendants have violated and continue to violate Section 1430(b) by, among other  
 4 things:

5 a. failing to comply with the 3.2 hour NHPPD requirement of Health &  
 6 Safety Code section 1276.5;

7 b. failing to provide “an adequate number of qualified nursing personnel” to  
 8 carry out all functions at the Facilities, in violation of Health & Safety Code section 1599.1.

9 79. As a result of defendants’ conduct, Plaintiffs and class members have suffered  
 10 injury and are entitled to statutory damages in an amount to be determined at trial, as well as  
 11 injunctive relief, attorneys’ fees and costs.

12 80. For purposes of California Health & Safety Code section 1430(b), on information  
 13 and belief, the California Department of Public Health (“DPH”) lists defendant Kindred West as  
 14 the licensee for defendants Alta Vista, Bay View, Canyonwood, Fifth Avenue, Golden Gate,  
 15 Hacienda, Orange, Santa Cruz, Valley Gardens, and Victorian; defendant Hillhaven as the  
 16 licensee for defendant Nineteenth Avenue; defendant Care Center of Rossmoor LLC as the  
 17 licensee for defendant Rossmoor; and defendant Smith Ranch Care Center LLC as the licensee  
 18 for defendant Smith Ranch.

19 **SECOND CAUSE OF ACTION FOR UNLAWFUL, UNFAIR AND DECEPTIVE**  
 20 **BUSINESS PRACTICES AGAINST ALL DEFENDANTS**

21 81. Plaintiffs refer to, and incorporate herein by this reference, paragraphs 1 through  
 22 80 above.

23 82. Defendants, and each of them, have engaged in unlawful and unfair business acts  
 24 and practices in violation of Business and Professions Code section 17200 *et seq.*

25 83. In particular, defendants, and each of them, have engaged in unlawful business  
 26 acts and practices in violation of Business and Professions Code section 17200 *et seq.* by  
 27 violating numerous laws, statutes and regulations including, without limitation:  
 28

1 a. Failing to maintain adequate levels of nursing staff necessary to meet the  
2 3.2 NHPPD requirement in violation of Health & Safety Code section 1276.5;

3 b. Failing to employ an adequate number of nursing qualified personnel  
4 violation of Health & Safety Code section 1599.1;

5 c. Systematically and uniformly failing to disclose and/or misrepresenting the  
6 true level of nurse staffing provided at their California skilled nursing facilities in violation of  
7 Business & Professions Code section 17500, *et seq.*

8 84. By virtue of the conduct alleged herein, defendants, and each of them, have also  
9 engaged in fraudulent business practices in connection with the representations, promises,  
10 omissions, and other statements made concerning the level of nurse staffing offered to residents  
11 admitted to their California skilled nursing facilities.

12 85. By virtue of the conduct alleged herein, defendants, and each of them, have also  
13 engaged in deceptive and misleading advertising through representations, promises, omissions,  
14 and other statements made concerning the level of nurse staffing offered to residents admitted to  
15 their California skilled nursing facilities.

16 86. Members of the general public (including without limitation persons admitted to  
17 and/or residing in the Facilities during the Class Period, and their family members and/or  
18 representatives) have been and are likely to be deceived by the statements, representations,  
19 omissions, and other conduct by defendants as alleged herein.

20 87. The acts and practices of defendants, and each of them, also constitute unfair  
21 business acts and practices within the meaning of Business & Professions Code section 17200, *et*  
22 *seq.*, in that the conduct alleged herein is immoral, unscrupulous and contrary to public policy,  
23 and the detriment and gravity of that conduct outweighs any benefits attributable to such conduct.  
24 Further, defendants' conduct threatens actual and incipient violations of numerous laws and  
25 regulations intended to protect elderly and/or disabled residents, and in addition, defendants'  
26 conduct violates the policy or spirit of these laws and otherwise results in a significant harm or  
27 threat of harm to elderly and/or disabled residents.  
28

1           88. Defendants' conduct presents a continuing threat of harm to the public in that,  
 2 among other things, defendants continue to mislead elderly and/or disabled persons (and their  
 3 family members and/or representatives) into agreeing to be admitted to their skilled nursing  
 4 facilities based on the false and misleading representations and failure to disclose the true facts  
 5 concerning inadequate staffing and understaffing at the Facilities.

6           89. As a direct and proximate result of the defendants' unlawful business practices,  
 7 Plaintiffs and members of the Class have been injured in fact, lost money and sustained  
 8 substantial economic harm as alleged herein. Likewise, as a direct and proximate result of the  
 9 defendants' unlawful business practices, members of the general public (including Class  
 10 members) have been harmed and continue to be harmed by defendants' conduct.

11           90. Plaintiffs seek an injunction that requires that defendants immediately cease acts of  
 12 unfair and fraudulent business acts or practices as alleged herein, and to enjoin defendants from  
 13 continuing to engage in any such acts or practices in the future. Plaintiffs also seek restitution,  
 14 attorneys' fees, and all other remedies permitted by law.

15           **THIRD CAUSE OF ACTION FOR VIOLATION OF THE CALIFORNIA CONSUMER**  
 16           **LEGAL REMEDIES ACT AGAINST ALL DEFENDANTS**

17           91. Plaintiffs refer to, and incorporate herein by this reference, paragraphs 1 through  
 18 90 above.

19           92. Defendants have represented and continue to represent to the public that they  
 20 provide sufficient nurse staffing to comply with state law through various uniform means of  
 21 communication, including without limitation, defendants' promotional materials, admission  
 22 agreements, submissions made to DPH and other materials disseminated to the public in  
 23 connection with defendants' services.

24           93. Notwithstanding these representations, defendants have failed to disclose the true  
 25 facts that their Facilities do not and will not provide sufficient nurse staffing to comply with state  
 26 law.

27           94. These acts and practices by defendants were intended to induce and lure elderly  
 28 and/or disabled residents into agreeing to be admitted to the Facilities based on false and

misleading representations without disclosing the true facts concerning inadequate staffing and understaffing at the Facilities.

95. As a result, defendants have violated and continue to violate the Consumer Legal Remedies Act, Civil Code §§ 1770 *et seq.* (“CLRA”) in at least the following respects:

a. In violation of section 1770(a)(5), the defendants’ acts and practices constitute misrepresentations and/or omissions that the skilled nursing care that they purport to provide had characteristics, standards, and performance which it did not have; and

b. In violation of section 1770(a)(7), the defendants have misrepresented that the skilled nursing care that they purport to provide is of a particular standard, quality and/or grade, when it is not.

96. Accordingly, Plaintiffs seek appropriate injunctive relief to address defendants’ ongoing violations of the CLRA.

### **PRAYER**

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For a Court order certifying that the action may be maintained as a class action;
2. For a Court order requiring that defendants immediately cease acts that constitute unlawful, unfair, and fraudulent business practices, and violations of the CLRA as alleged herein, and to enjoin defendants from continuing to engage in any such acts or practices in the future;
3. For injunctive relief prohibiting defendants’ violations of the Health & Safety Code § 1430(b) in the future;
4. For restitution and any other monetary relief permitted by law;
97. For statutory damages in an amount to be proven at trial, including \$500.00 in statutory damages for each understaffed Facility day in violation of each Class Members’ rights pursuant to Health & Safety Code § 1430(b);
98. For treble damages pursuant to Civil Code section 3345;
99. For pre-judgment interest, according to law;
100. For attorneys’ fees and costs; and

101. For such other and further relief as the Court may deem just and proper.

Dated: March 18, 2011

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**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury on all issues stated.

Dated: March 18, 2011

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